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CLERK US DISTRICT COURT
WD OF TN JACKSON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 03-10104-T-An
)
)
BETTY S. CONRAD,)
)
Defendant.)

ORDER DENYING DEFENDANT'S MOTION FOR RETURN OF PROPERTY

Defendant Betty S. Conrad has moved for the return of certain property that was seized during the execution of a search by law enforcement officers on two separate occasions. The Government has responded to the motion. For the reasons set forth below, Defendant's motion is DENIED.

Fed. R. Crim. P. 41(e) provides, in relevant part:

A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property.

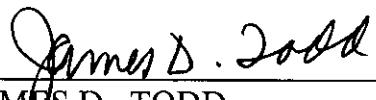
As explained in United States v. Duncan, 918 F.2d 647, 654 (6th Cir. 1990),

The general rule is that seized property, other than contraband, should be returned to the rightful owner after the criminal proceedings have terminated. However, a defendant's right to the return of lawfully seized property is subject to any continuing interest the government has in the property. The government's interest may take different forms as long as it is a legitimate interest.

(citations and internal quotation marks omitted).

In the present case, the proceedings have not terminated because the appellate process is on-going and the statute of limitations for Defendant to file a motion pursuant to 28 U.S.C. § 2255 has not yet run. If Defendant prevails on appeal or if the court grants a § 2255 motion, then the property that was seized might be needed at a subsequent trial. Thus, the Government continues to have an interest in the property that was seized, and Defendant's motion is DENIED on this ground.

IT IS SO ORDERED.



JAMES D. TODD
UNITED STATES DISTRICT JUDGE



DATE



Notice of Distribution

This notice confirms a copy of the document docketed as number 419 in case 1:03-CR-10104 was distributed by fax, mail, or direct printing on October 24, 2005 to the parties listed.

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Honorable James Todd
US DISTRICT COURT